

Court of Appeal, Third Appellate District - No. C050297
S136294

SUPREME COURT
FILED

IN THE SUPREME COURT OF CALIFORNIA

En Banc

AUG 12 2005

EDWARD J. COSTA et al., Petitioners,

v.

Frederick K. Ohlrich

SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent;

BILL LOCKYER et al., Real Parties in Interest.

Deputy

Petition for review GRANTED.

The judgment of the Superior Court of Sacramento County filed on July 22, 2005, in *Lockyer v. McPherson et al.* (05CS00998), directing the Secretary of State not to place any version of Proposition 77 on the November 8, 2005, special election ballot or in the voter election materials, is stayed pending this court's determination of this matter or further order of this court.

In the absence of a showing that the discrepancies between (1) the version of the initiative measure that was submitted to the Attorney General and (2) the version of the initiative measure that was circulated for signature (and that was signed by the requisite number of qualified voters and has been certified for placement on the ballot) were likely to have misled the persons who signed the initiative petition, we conclude that it would not be appropriate to deny the electorate the opportunity to vote on Proposition 77 at the special election to be held on November 8, 2005, on the basis of such discrepancies. (Cf. *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 652-654.) Accordingly, the Secretary of State and other public officials are directed to proceed with all the required steps to place in the election pamphlet and on the ballot of the special election to be held on November 8, 2005, the version of Proposition 77 that was signed by the requisite number of qualified voters. Any public official or other person who has not had an opportunity to revise statements or ballot arguments that have already been submitted to the Secretary of State in order to reflect the version of Proposition 77 that will appear in the election pamphlet and on the ballot shall be permitted to submit a revised statement or ballot argument to the Secretary of State no later than 3 p.m. on Monday, August 15, 2005. After the election, we shall determine whether to retain jurisdiction in this matter and resolve the issues raised in the petition.

Kennard, J., and Moreno, J., voted to deny review.

Werdegar, J., unavailable and did not participate.

George
Chief Justice

Baxter
Associate Justice

Chin
Associate Justice

Aldrich*
Associate Justice

* Hon. Richard D. Aldrich, Associate Justice of the Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

COPY

DIANE F. BOYER-VINE

Legislative Counsel

State Bar No. 124182

MARIAN M. JOHNSTON

Principal Deputy Legislative Counsel

State Bar No. 61643

LISA C. GOLDKUHL

Deputy Legislative Counsel

State Bar No. 191740

FILED / ENDORSED

AUG - 3 2005

By Christa Beebout, Deputy Clerk

Office of Legislative Counsel

925 L Street, Suite 900

Sacramento, California 95814

Telephone: (916) 341-8123

Facsimile: (916) 341-8395

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ELIZABETH G. HILL, in her
official capacity as the
Legislative Analyst for the
State of California,

Petitioner,

v.

BRUCE MCPHERSON, in his
official capacity as Secretary
of State for the State of
California,

Respondent.

GEOFF BRANDT, in his official
capacity as the State Printer,

Real Party in Interest.

) Case No. 05CS01132
)
) ALTERNATE WRIT OF MANDATE;
) ORDER TO SHOW CAUSE
)
) (Propositions 77 and 78)
)

) Date: AUG - 8 2005
) Time: 3:30 p.m.
) Dept: 33
)
)
)

) Exempt from Fees
) (Gov. Code § 6103)

/ / /

/ / /

/ / /

ALTERNATE WRIT OF MANDATE
(Propositions 77 and 78)

1 To: Respondent SECRETARY OF STATE BRUCE MCPHERSON

2 YOU ARE HEREBY ORDERED AS FOLLOWS:

3 1. Make the following change in the Proposition 77

4 Analysis by the Legislative Analyst:

5 Insert the box attached hereto as
6 Exhibit 1, entitled "Major Steps to
7 Select Redistricting Panel Under
8 Proposition 77," into that analysis;
9 and

10 2. Make the following change in the Proposition 78

11 Analysis by the Legislative Analyst:

12 Insert the box attached hereto as
13 Exhibit 2, entitled "Figure 1 Key
14 Differences Between Propositions 78 and
15 79," into that analysis; or

16 IN THE ALTERNATIVE TO SHOW CAUSE before this court on August 8,
17 2005, at 3:30 p.m., in Department 33, at the Superior Court
18 of the State of California, Sacramento, California, located at
19 720 Ninth Street, Sacramento, California, 95814, why you have
20 not done so.

21 The following briefing schedule shall apply:

22 Opposition, if any, shall be filed and served on petitioner
23 by facsimile and regular mail no later than August 5, 2005, at

24 3:30 p.m.

25 / / /

/ / /

/ / /

/ / /

Reply, if any, shall be filed and served on respondent by facsimile and regular mail no later than August 8, 2005, at 12:00 PM p.m.

LLOYD G. CONNELLY
Judge of the Superior Court

Major Steps to Select Redistricting Panel Under Proposition 77

1. Judicial Council (an administrative body of the court system) collects list of retired judges willing to serve on a panel. The judges must not have:
 - Held partisan political office.
 - Changed their party affiliation since their judicial appointment.
 - Received income over the past year from specified political sources.
2. Judicial Council randomly selects a pool of 24 judges from the list of volunteers. The two largest political parties must have equal representation.
3. The four legislative leaders (two each from the majority and minority parties) nominate a total of 12 judges from the pool. The leaders each nominate three judges with party affiliations different than their own. Each leader is then able to eliminate one of the nominated judges.
4. From the nominated judges remaining on the list, three judges are selected at random to serve as the panel. Each of the two largest political parties must have at least one representative.
5. The selected judges pledge, in writing, to not run for offices affected by the districts they draw or accept public jobs (other than judicial or teaching) for the next five years.

Figure 1

Key Differences Between Propositions 78 and 79

	Proposition 78	Proposition 79
General eligibility requirements	<ul style="list-style-type: none"> California residents in families with an income at or below 300 percent of the federal poverty level. (About \$29,000 annually for an individual and \$58,000 for a family of four.) No such provision. 	<ul style="list-style-type: none"> California residents in families with an income at or below 400 percent of the federal poverty level. (About \$38,000 annually for an individual and \$77,000 for a family of four.) Also, persons in families with medical expenses at or above 5 percent of their family's income.
Persons excluded from coverage	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal, Healthy Families, a third-party payer, or a health plan or drug discount program supported with state or federal funds (except Medicare beneficiaries). Certain persons with drug coverage, during the three-month period prior to the month the person applied for a drug discount card. 	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries). No such provision.
Application and renewal fee	<ul style="list-style-type: none"> \$15 per year. 	<ul style="list-style-type: none"> \$10 per year.
Method of obtaining rebates from drug makers	<ul style="list-style-type: none"> Negotiated with drug makers. No such provision. 	<ul style="list-style-type: none"> Negotiated with drug makers. Subject to federal approval, links new drug discount program to Medi-Cal for the purpose of obtaining rebates on drugs.
Assistance to business and labor organizations	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Establishes drug discount program to assist certain business and labor entities.
Prescription Drug Advisory Board	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Creates new nine-member panel to review the access to and pricing of drugs.
Lawsuits over drug profiteering law	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

JUL 29 2005

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

EDWARD J. COSTA et al.,
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent;
BILL LOCKYER etc. et al.,
Real Party in Interest.

C050297
Sacramento County
No. 05CS00998

BY THE COURT:

A supplemental petition for writ of mandate has been filed in this cause. The proponents of the initiative measure at issue submitted a draft version to the Attorney General under Elections Code section 9004 and circulated a different version for signatures. In view of this litigation, the Secretary of State has provided both versions in the copy of the ballot pamphlet made available for public examination under Elections Code section 9092. The Attorney General has provided a ballot title (Elec. Code, § 9050) and ballot label (Elec. Code, § 13281) for the initiative measure but has informed the Secretary of State that in his view it is only applicable to the draft version submitted to him. The petitioners request an order directing the Attorney General to provide a separate ballot title and ballot label for the version which was circulated. They contend that otherwise this court's ability to order that version to appear on the ballot may be impaired by failure to comply with Elections Code section 9092.

We have received and reviewed opposition to this request from the Attorney General and from real party in interest, Californians for Fair Representation -- No on 77.

Good cause appearing (see e.g., *People ex rel. San Francisco Bay Conservation & Devel. Comm'n v. Town of Emeryville* (1968) 69 Cal.2d 533), the Attorney General is directed to provide to the Secretary of State by 5:00 p.m. on August 1, 2005, a ballot title (Elec. Code, § 9050) and ballot label (Elec. Code, § 13281) for the version of the proposition which was circulated.

Dated: July 29, 2005

SCOTLAND, P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

JUL 25 2005

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

EDWARD J. COSTA et al.,
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent;

BILL LOCKYER etc. et al.,
Real Party in Interest.

C050297
Sacramento County
No. 05CS00998

BY THE COURT:

The July 22, 2005, "Order Directing Issurance of Peremptory Writ of Mandate and Declaratory Relief," and the July 22, 2005, "Judgment Granting Petition for Writ of Mandate; Judicial Declaration," filed by the Sacramento County Superior Court, in *Lockyer v. McPherson*, Sacramento County No. 05CS00998, are temporarily stayed pending receipt of opposition and further order of this court. Real parties in interest may file informal opposition to this petition on or before July 29, 2005.

Given this temporary stay order, nothing prevents real party in interest Bruce McPherson, Secretary of State for the State of California, from complying with the public comment period specified in Elections Code section 9092 as to Proposition 77.

This order does not reflect any decision on the merits.

Dated: July 25, 2005

BLEASE, Acting P.J.

cc: See Mailing List



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

RICHARD M. FRANK
Chief Deputy Attorney General
Legal Affairs

July 25, 2005

Via Hand Delivery

Brad Clark
Assistant Secretary of State, Elections
Office of the Secretary of State
1500 11th Street
Sacramento, CA 95814

Re: Issuance of Ballot Title and Summary and Ballot Label for Proposition 77

Dear Mr. Clark:

In response to the stay issued earlier today by the Third District Court of Appeal in *Costa et al. v. Superior Court* (No. C050297), we enclose the ballot title and summary and ballot label for Proposition 77. As you know, the pending litigation over Proposition 77 arose because the proponents of the measure submitted one version of the initiative to the Attorney General for preparation of a title and summary, but then prepared and circulated a different version for collection of signatures. We believe, and we will continue to assert, that the proponents' action violated the California Constitution and that therefore neither version can be placed on the November 8, 2005, special election ballot. Nonetheless, in light of the stay, and pending a final determination by the appellate courts, we are now placed in the unprecedented and untenable position of having to determine which version of the initiative should receive a ballot title and summary and ballot label from our office.

Based on our review of applicable law and of the facts surrounding this matter, we believe we are obligated to issue a ballot title and summary and ballot label for the version of the measure that was submitted by the proponents to the Attorney General and attached to the certification issued by the Secretary of State. As you know, that version was posted on the Attorney General's web site, was forwarded to the Legislative Analyst for preparation of a fiscal analysis, was the subject of our circulating title and summary, and was submitted by the Secretary of State to the Legislature.

Brad Clark
Assistant Secretary of State
July 25, 2005

We do not believe we have a legal basis, absent a court order to the contrary, to issue a ballot title and summary and ballot label for the version of the measure that circulated to the voters. That version was never submitted to the Attorney General's Office by the proponents, was never forwarded to the Legislative Analyst's Office for preparation of a fiscal analysis as the law requires, and was not attached to the Secretary of State's certification package or forwarded to the Legislature.

Accordingly, enclosed is a ballot title and summary and ballot label for the version of the initiative submitted to our office by the proponents.

Although we have not prepared a title and summary and ballot label for the version of the initiative submitted by the proponents for circulation, we have had the opportunity to review this latter version in the context of the pending litigation and believe that it differs substantively from the version submitted to our office. And, if we were ordered to issue a ballot title and summary and ballot label for this latter version, it would be different from the one we are issuing.

Sincerely,

RICHARD M. FRANK
Chief Deputy Attorney General for Legal Affairs

cc: Counsel of Record in Case No. C050297